

OGC HAS REVIEWED.

22 September 1955

MEMORANDUM FOR: Special Assistant to the Director for Planning
and Coordination

SUBJECT : Plan for Technical Panel for Test Inspection
of Armaments

1. As suggested in your memorandum of 13 September, we have reviewed the position paper on the Technical Panel Exchange, number DCS/5, dated 19 August 1955 and the JCS Revision which appears as DCS/5 B, dated 2 September 1955.

2. In addition, we have reviewed the letter from the Department of Justice to Mr. Stassen dated 9 September 1955 in which it is indicated that legal opinions would be desirable from this Agency as well as others. It would appear that one of the principal questions of concern to the Department of Justice is whether or not the President may authorize other nations, including the USSR, to have access to classified facilities and documents.

3. The principal basis for classification arises from the provisions of Title 18 of the U. S. Code, sections 793 and 794. The statute has been implemented by Executive Order 10501. There are other specific statutes bearing on the subject such as section 798 of Title 18 of the U. S. Code relating to communications intelligence and cryptographic information. Also, the Atomic Energy Act of 1954 carries a special definition of Restricted Data. We believe that sections 793 and 794 would not act as a legal bar to approval by the President of the proposals for test inspections and although lawyers might engage in technical debates, the Department of Justice eventually will resolve the matter. As to section 798, this does not seem to be pertinent in view of the subject matter of the inspection. The Atomic Energy Act is a matter which can be left to AEC and Justice. It is also possible that if test inspection were to be under the auspices of the UN and pursuant to the treaty obligations of the United States, difficulties could be resolved in view of the constitutional provision

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that "all treaties made . . . under the authority of the United States shall be the supreme law of the land." We view all of these matters a problem for the Department of Justice and other agencies and no law directed specifically at CIA is pertinent.

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5. In reviewing the position papers on the Technical Panel and other background papers, we find an absence of any reference to intelligence activities. From this we would assume that it is the intent that the Panel members would not have access to the intelligence activities or programs of the various nations. In view of this, we believe that this Office would have little, if any, to contribute to the Department of Justice on this matter. However, we would be an interested auditor at any discussions along this line.

6. The comments contained in the attachment are offered for your consideration and possible assistance and are keyed to Annex C to the JCS Revision. We particularly invite your attention to item 66 relating to classification of reports and information assembled by the Panel. The original position paper suggested that they be labeled "secret." JCS has suggested that they be labeled "UN Secret." Our comment on this is that once having made the information available to friendly nations as well as the USSR, there would be little basis as a legal matter for classification in the accepted sense. We further commented that there appears to be little justification on a policy basis for labeling it "UN

Secret" for US purposes. It is also possible that lack of classification could assist in solving part of the legal problem bothering the Department of Justice. If the data and information involved is declassified at the time of inspection, there would appear to be no basis for legal questions in transmitting the information. Certainly there are no legal bars to declassification by Presidential action.

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[REDACTED]

Attachment

Deputy General Counsel

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